

**Agreement to Turnage Heights Lift Station**  
**And**  
**Mud Creek Outfall Project**  
**between the City of Durham and**  
**McKim & Creed, Inc.**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law

**~~STANDARD FORM OF AGREEMENT~~**  
**~~BETWEEN OWNER AND ENGINEER~~**  
**~~FOR~~**  
**~~PROFESSIONAL SERVICES~~**

*Prepared by*  
**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**  
and

Issued and Published Jointly By  
PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

\_\_\_\_\_  
AMERICAN CONSULTING ENGINEERS COUNCIL

\_\_\_\_\_  
AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition). For guidance on the completion and use of this Agreement, see EJCDC Users Guide, No. 1910-50.

EJCDC No. 1910-1 (1996 Edition)

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~~STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES~~

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, 2013 (“Effective Date”) between the City of Durham, a North Carolina municipal corporation (“OWNER” or “Owner”) and McKim & Creed, Inc. (“ENGINEER” or “Engineer”). The title of this Agreement is stated at the top of page 1 , above. ENGINEER is a

corporation organized and existing under the laws of North Carolina.

*[In the space above, indicate the type of entity, for instance: a corporation organized and existing under the laws of [name of State];*

*a professional corporation organized and existing under the laws of [name of State];*

*a professional association organized and existing under the laws of [name of State];*

*a limited partnership organized under the laws of [name of State]*

*a limited liability partnership organized and existing under the laws of [name of State];*

*a sole proprietorship;*

*or a general partnership].*

OWNER intends to provide for the abandonment of the existing Turnage Heights Lift Station and replacement with an alternative sewer system. (“Project”).

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

This Agreement is a total of 63 pages, being 18 pages in the main part of the Agreement and 34 pages of Exhibits and 10 pages of Attachment No.1 and 1 Exhibit Map .

**ARTICLE 1 - SERVICES OF ENGINEER**

**1.01 Scope**

A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.

B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.

C. ~~If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.~~

Owner ☒authorizes ☐does not authorize  
Engineer to furnish Resident Project  
Representative(s) with duties, responsibilities and  
limitations of authority as set forth in Exhibit D.

**ARTICLE 2 - OWNER’S RESPONSIBILITIES**

**2.01 General**

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

**ARTICLE 3 - TIMES FOR RENDERING SERVICES**

### 3.01 General

A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.

B. If in this Agreement specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment but nevertheless, the total compensation shall be limited by any applicable provisions in this Agreement that set a ceiling on compensation. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

### 3.02 Suspension

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. The Owner may suspend the Engineer's services in whole or in part. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

## ARTICLE 4 - PAYMENTS TO ENGINEER

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### 4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

A. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.

B. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.

C. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

### 4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of one per cent (1.0%) per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Disputed Invoices.* In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. Failure to withhold a payment does not constitute a waiver of any of the Owner's claims or defenses with respect to the services for which that payment is made.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable

Expenses (if applicable) incurred through the effective date of termination.

2. In the event of termination by OWNER for convenience or by ENGINEER for cause, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C, but the amount that the Engineer would have saved had it acted reasonably shall be subtracted.

E. *Records of ENGINEER's Costs.* Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. ~~To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.~~ The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Engineer's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Engineer shall maintain all such records and provide the Owner access to them, and the right to copy them at cost, until at least four years after Engineer's last request for payment under this Agreement.

~~F. *Legislative Actions.* In the event of legislative actions after the Effective Date of the Agreement by any level of government that impose taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.~~

## ARTICLE 5 - OPINIONS OF COST

### 5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and

qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

### 5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement. If Exhibit F is not used, or if a Construction Cost limit is not otherwise specified, it is agreed that a Construction Cost limit is not established.

### 5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

## ARTICLE 6 - GENERAL CONSIDERATIONS

### 6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services. The Engineer warrants the accuracy of Engineer's representations made to Owner as to Engineer's qualifications and experience during the process in which the Owner selected the Engineer. The Engineer represents that it is registered, licensed, and authorized to practice engineering in North Carolina.

B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such

action is directly attributable to deficiencies in OWNER-furnished information. Without limiting the foregoing, it is agreed that the Owner's approvals of documents and other items are not waivers or releases of the Engineer's duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards.

C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies. ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER's Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER's Consultant unacceptable to ENGINEER.

D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation. Without limiting the foregoing, it is agreed that the Engineer shall comply with applicable provisions of N. C. General Statutes Chapter 133, Article 1.

E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement, except to the extent (i) that OWNER may indicate that the requirements, programs, instructions, reports, data, or other information is not necessarily accurate or complete, or (ii) that an engineer acting reasonably and in accordance with applicable professional standards would question, doubt, or not rely thereon. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement. This paragraph is subject to paragraph 6.04.

F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services of ENGINEER.

G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work," or of

any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.

H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.

J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by OWNER without consultation and advice of ENGINEER.

L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, ~~1996~~ 1990 Edition) ~~unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J or any newer version selected by the Owner, supplemented by the Owner's Supplementary Conditions, as modified by the Owner from time to time.~~ The construction

contract will be the EJCDC contract form issued in conjunction with the General Conditions, as that contract form has been modified by the Owner from time to time.

## **6.02 Authorized Project Representatives**

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

## **6.03 Design without Construction Phase Services**

A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

## **6.04 Use of Documents**

A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

B. Copies of OWNER-furnished data that may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall ~~not be responsible to~~ maintain documents stored in electronic media format for a period of 3 years after acceptance by OWNER.

E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.

F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. ENGINEER shall not prohibit any such reuse or modification without even if it lacks written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, but such reuse or modification will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom from such reuse by OWNER on extensions of the Project or on any other project. To reduce the likelihood that anyone will make claims against ENGINEER arising out of such reuse, OWNER may modify Documents involved in such reuse by either (a) indicating that ENGINEER did not prepare them for such reuse and is not responsible for their reuse or (b) unless prohibited by applicable Law and Regulations, deleting ENGINEER's name from them.

G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

H. Any verification by ENGINEER or adaptation by ENGINEER of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

## 6.05 Insurance

A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance."

B. ~~Reserved. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance." OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.~~

C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be ~~listed~~ named as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project

D. ~~OWNER and~~ OWNER and ENGINEER shall each deliver to the ~~other Owner~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain and shall require ENGINEER's Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as

requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

## 6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause,*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

1) upon seven days written notice stating specifically how ~~if~~ ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or

2) upon seven days written notice stating that ~~if~~ the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.

3) ENGINEER shall have no liability to OWNER on account of such termination.

c. Notwithstanding the foregoing, neither the obligation to provide further services nor this Agreement will not terminate pursuant to "a" or "b" of this subparagraph as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to ~~correct~~ cure the matters pointed out in the notice its failure to perform and proceeds diligently to cure the matters such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure matters cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. *For convenience,*



a. By OWNER effective upon the receipt of notice by ENGINEER or at a later time specified in the notice.

B. ~~The terminating~~ Either party under paragraphs 6.06.A.1 ~~or 6.06.A.2~~ may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Any termination under this paragraph 6.06 shall occur automatically upon the passage of the requisite time period unless the cure provisions of 6.06(A)(1)(c), if applicable, are complied with and the terminating party has received notice of that compliance.

In case of any termination, the Engineer shall (a) cooperate with the Owner in Owner's efforts to complete the Project, (b) provide information requested by the Owner in connection with completion of the Project, (c) provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by the Engineer up to the date of termination, and (d) if requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination. Services provided after termination shall be compensated as Contingent Additional Services."

## **6.07 Controlling Law**

A. This Agreement is to be governed by the law of the state in which the Project is located.

## **6.08 Successors, Assigns, and Beneficiaries**

A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.B the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent

that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

## **6.09 Dispute Resolution**

A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.

B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit H, "Dispute Resolution."

## **6.10 Hazardous Environmental Condition**

A. OWNER represents to Engineer that to the best of its knowledge a Hazardous Environmental Condition does not exist. ENGINEER represents to OWNER that to the best of its knowledge a Hazardous Environmental Condition does not exist.

B. OWNER has disclosed to the best of its knowledge to ENGINEER, and ENGINEER has disclosed to the best of its knowledge to OWNER, the existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.

C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall

have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants or provides a warranty from a third party that the Hazardous Environmental Condition has been abated, remediated, or removed ~~Site is in full compliance with applicable Laws and Regulations.~~

E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

## **6.11 Allocation of Risks**

### **A. Indemnification**

1. (a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, ENGINEER shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of ENGINEER's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of ENGINEER or its subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), ENGINEER shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to OWNER.

(b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent allowed by law, ENGINEER shall defend, indemnify, and save harmless Indemnitees from and against all other Charges (not covered in subsection (a)) that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of ENGINEER or subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (b), ENGINEER shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to OWNER.

(c) Definitions. As used in subsections "a" and "b" above and "d" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means OWNER and its officers, officials, independent contractors, agents, and employees, excluding ENGINEER. "Professional Services" means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. "Professional Negligence" means failure of ENGINEER to comply with the applicable standard of care to render Professional Services. That standard shall meet a national standard, unless a higher standard of care is applicable in the Durham community or similar communities.

(d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of OWNER that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(e) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and

termination of the services of ENGINEER under this contract.

(f) Limitations of ENGINEER's Obligation. Subsections "a" and "b" above shall not require ENGINEER to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.

2. Reserved. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and OWNER's consultants with respect to this Agreement or the Project.

3. Reserved. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, and all other negligent entities and individuals.

4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from

and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

5. (Reserved) The indemnification provision of paragraph 6.11.A.1 is subject to and limited as follows: by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any. The total liability of Engineer and Engineer's officers, directors, partners, and employees for all claims, losses, costs, and damages for (a) Engineer's breach of this Agreement, or (b) Engineer's breach of the applicable duty of care owed to the Owner with respect to services performed or required to be performed pursuant to this Agreement shall not exceed one million dollars. If Engineer breaches its obligations under this Agreement to provide insurance, the preceding sentence shall not limit damages payable by Engineer for breach of those obligations.

## 6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. The address can be changed from time to time by giving notice pursuant to this Agreement.

## 6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

## 6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all

remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **6.15 Waiver**

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **6.16 Headings**

A. The headings used in this Agreement are for general reference only and do not have special significance.

### **ARTICLE 7 - DEFINITIONS**

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#### **7.01 Defined Terms**

A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.

2. *Additional Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.

3. *Agreement*--This document, consisting of the main body of this Agreement, together with the Exhibits and Attachment No. 1, "Standard Form of Agreement between OWNER and ENGINEER for Professional Services," including those Exhibits listed in Article 8 hereof.

4. *Application for Payment*--The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

5. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is

releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6. *Basic Services*--The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.

7. *Bid*--The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

8. *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

9. *Change Order*--A document ~~recommended by ENGINEER, which that is~~ signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

10. *Construction Agreement*--The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.

11. *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

12. *Construction Cost*--The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

13. *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including

documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

14. *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

15. *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

16. *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

17. *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

18. *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

19. *Documents*--Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic

media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.

20. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

21. *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

22. *Effective Date of the Agreement*--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

23. *ENGINEER's Consultants*--Individuals or entities having a contract with ENGINEER to furnish services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

24. *Field Order*--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

25. *General Conditions*--That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

26. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

27. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

28. *Laws and Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

29. *PCB's*--Polychlorinated biphenyls.

30. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

31. *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

32. *Record Drawings*--The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.

33. *Reimbursable Expenses*--The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.

34. *Resident Project Representative*--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.

35. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and

which establish the standards by which such portion of the Work will be judged.

36. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.

37. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

38. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

39. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

40. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements the General Conditions.

41. *Total Project Costs*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement.

42. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or

furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

43. *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

44. *Written Amendment*--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

## **ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS**

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### **8.01 Total Agreement**

A. This Agreement (defined in paragraph 7.01) ~~consisting of pages 1 to 15 inclusive, together with the Exhibits identified above~~ constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

### **8.02 City of Durham Provisions**

A. **Choice of Law and Forum.** This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in

nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

### **B. Performance of Government**

**Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

**C. City Policy.** THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

**D. Equal Employment Opportunity (EEO) Provisions.** During the performance of this Contract the Engineer agrees as follows: (1) The Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Engineer shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Engineer shall in all solicitations or advertisement for employees placed by or on behalf of the Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Engineer shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Engineer's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the Engineer ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Engineer shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions

will be binding upon such subcontractors and vendors.

**E. Small Disadvantaged Business Enterprises (SDBE).** The Engineer shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Engineer to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Engineer. For purposes of this part E, in the following quoted sentences, the "Contractor" means the "Engineer." Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Engineer's alleged violations of its obligations under Article III of Chapter 18 and not to the Engineer's alleged violations of other obligations.

**F. Prompt Payment to Subcontractors.**

(a) Within 14 days of receipt by the Engineer of each payment from the Owner under this Agreement, the Engineer shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 14 days after Engineer's receipt of payment from the Owner under this Agreement, the Engineer shall pay the Subcontractor interest, beginning on the 16<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Engineer, but not against the City of Durham.

(b) If the Owner's Designated Representative determines that it is appropriate to enforce subsection (a) in this manner, the Owner may withhold from progress or final payments to the Engineer the sums estimated by the Owner's Designated Representative to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the Owner to the Engineer.

This subsection (b) does not limit any other rights to withhold payments that the Owner may have.

(c) Nothing in this section (titled "Prompt Payment to Subcontractors") shall prevent the Engineer at the time of invoicing, application, and certification to the Owner from withholding invoicing, application, and certification to the Owner for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Engineer or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Owner's Designated Representative may require, as a prerequisite to making progress or final payments, that the Engineer provide statements from any Subcontractors designated by the Owner's Designated Representative regarding the status of their accounts with the Engineer. The statements shall be in such format as the Owner's Designated Representative reasonably requires, including notarization if so specified.

**G. E-Verify Compliance.** The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). In this E-Verify Compliance section, "contractor," "its subcontractors," and "comply" shall have the meanings intended by NCGS 160A-20.1(b). The City is relying on this section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).



**8.03                      Addresses for Notice.**

The OWNER's address for giving notices is:

ATTN:

101 City Hall Plaza  
Durham, NC 27701

The ENGINEER's address for giving notices is:

Atten; Bryan F. Blake, PE  
Vice President  
McKim & Creed, Inc.  
1730 Varsity Dr.  
Raleigh, NC 27606

OWNER's Designated Representative (per paragraph 6.02.A):

Phone Number: do

Fax Number:

E-Mail Address:

Title of ENGINEER's Designated Representative (per paragraph 6.02.A): Vice President

Phone Number: (919) 233-8091

Fax Number: (919) 233 8031

E-Mail Address: bblake@mckimcreed.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 3.

CITY OF DURHAM

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_

Preaudit Certification, if necessary:

signature for Engineer:

McKim & Creed, Inc.

ATTEST:

\_\_\_\_\_  
Brenda Paquin  
Assistant Corporate Secretary

By: \_\_\_\_\_ (SEAL)

Timothy J. Baldwin, PE  
Senior Vice President

acknowledgment for Engineer:

State of \_\_\_\_\_

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is \_\_\_\_\_ Secretary of McKIM & CREED, INC., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its \_\_\_\_\_ President, whose name is \_\_\_\_\_, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

*(for use with 1910-1, 1996 Edition)*

This is EXHIBIT A, part of the Agreement between  
Owner and Engineer for Professional Services dated

\_\_\_\_\_, \_\_\_\_\_.

## Engineer's Services

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Article 1 of the Agreement is ~~amended and~~ supplemented to include the ~~following agreement of the parties provisions of this Exhibit.~~ Engineer shall provide Basic and Additional Services as set forth below.

If a reasonable reading of this Agreement is that a service is to be provided as a Basic Service, the listing of a similar service in this Agreement is not intended to limit the performance of that service as a Basic Service. Without limiting the Owner's other rights and remedies, it is agreed that services that are needed because of the failure of the Engineer to comply with this Agreement or with its duties to the Owner shall be performed or provided by the Engineer without charge. Where the Agreement states that a service will be done or goods will be provided, it will be construed to require the Engineer to do the service or provide the goods, unless the context requires otherwise.

\_\_\_\_\_

### PART 1 -- BASIC SERVICES Applies:

A1.00 Applicability of Basic Services – The following listed Basic Services shall **not** apply to this Agreement: Sections A1.02 Preliminary Design Phase, A1.03 Final Design Phase, A1.04 Bidding or Negotiating Phase, A1.05 Construction Phase, and A1.06 Post-Construction Phase.

#### A1.01 Study and Report Phase

##### A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B which are not part of Engineer's Basic Services, and assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate four (as identified in Attachment No. 1) alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which

**120303RW**

Engineer recommends. This Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and, on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.

6. Perform or provide the following additional Study and Report Phase tasks or deliverables: As identified in Attachment No. 1

7. Furnish three review copies of the Report to Owner within See schedule in Attachment No. 1 days of authorization to begin services and review it with Owner.

8. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish three final copies of the revised Report to the Owner within See schedule in Attachment No. 1 days after completion of reviewing it with Owner.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

#### A1.02 Preliminary Design Phase

A. After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:

1. On the basis of the above acceptance, selection, and authorization, prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.

3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

4. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in paragraph A1.01.A.5.

5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables: As identified in Attachment No. 1.

6. Furnish the Preliminary Design Phase documents to and review them with Owner.

7. Submit to Owner \_\_\_\_\_ final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within \_\_\_\_\_ days after authorization to proceed with this phase.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

#### A1.03 Final Design Phase

A. After acceptance by Owner of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.

2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist Owner in consultations with appropriate authorities.

3. Advise Owner of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in paragraph A1.01.A.5.

4. Perform or provide the following additional Final Design Phase tasks or deliverables:  
As identified in Attachment No. 1.

5. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.

6. Submit \_\_\_\_\_ final copies of the Bidding Documents and a revised opinion of probable Construction Cost to Owner within \_\_\_\_\_ days after authorization to proceed with this phase.

B. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be

prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is \_\_\_\_.

D. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to Owner.

#### A1.04 Bidding or Negotiating Phase

A. After acceptance by Owner of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.

2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.

4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

5. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

As part of Basic Services, the Engineer shall perform the paragraph A1.04 services for two rounds of bids if the Owner, in its discretion, decides to bid a second round.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement).

#### A1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. General Administration of Construction Contract. Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of

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the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer and Owner may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.

2. Resident Project Representative (RPR). Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend Engineer's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.

3. Selecting Independent Testing Laboratory. Assist Owner in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.

4. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.

5. Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

6. Visits to Site and Observation of Construction. In connection with observations of Contractor's work in progress while it is in progress:

a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary based on Engineer's exercise of professional judgment, in order to observe as an experienced and qualified design professional the progress and quality of the Work. However, those visits shall be made at least unless the Owner otherwise agrees. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, Engineer will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, will determine if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents, and will endeavor to guard the Owner against defects and deficiencies in the Work. ~~and~~ Engineer shall keep Owner informed in writing of the progress of the Work.

b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed

Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. Defective Work. Recommend to Owner that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Engineer believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

8. Clarifications and Interpretations; Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents but shall promptly send all such Field Orders to the Owner's representative.

9. Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.

10. Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents and for the purpose of determining that if the Work is performed as shown by the submittals, it will be in compliance with the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Engineer has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to Engineer. The Engineer shall determine what aspects of the Work shall be the subject of submittals, and shall not knowingly permit such aspects to proceed in the absence of approved submittals.

11. Substitutes and "or-equal." Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.

12. Inspections and Tests. Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

13. Disagreements between Owner and Contractor. Render formal written decisions on all claims of Owner and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. Applications for Payment. Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain



how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

15. Contractor's Completion Documents.

a. Receive and review maintenance and operating instructions, schedules, and guarantees.

b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such Engineer's review will be limited as provided in paragraph A1.05.A.10.

c. Engineer shall transmit these documents to Owner.

16. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.

17. Additional Tasks. Perform or provide the following additional Construction Phase tasks or deliverables:

18. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

19. Time for Performance. The Engineer shall perform all of Engineer's tasks in the Construction Phase within a reasonable time, considering, among other relevant factors, the Contractor's Contract Time, schedules that the Engineer has indicated as acceptable, and the time that is appropriate for the tasks to be done to the level of professional skill and care that are required.

B. Duration of Construction Phase. The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. Limitation of Responsibilities. Engineer shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Engineer shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

#### A1.06 Post-Construction Phase

A. Upon written authorization from Owner, Engineer, during the Post-Construction Phase, shall:

1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.
2. Assist Owner in training Owner's staff to operate and maintain Project, equipment, and systems.
3. Assist Owner in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
4. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:

6. In company with Owner or Owner's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.

## PART 2 -- ADDITIONAL SERVICES

### A2.01 Additional Services Requiring Owner's Authorization in Advance

A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.

3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond Engineer's control.

4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.01.A.4.

5. Services required as a result of Owner's providing incomplete or incorrect Project information with respect to Exhibit B.

6. Providing renderings or models for Owner's use.

7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.

8. Furnishing services of Engineer's Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F or other provisions of this Agreement.
15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
18. ~~Preparing and furnishing to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.~~
19. Preparation of operation and maintenance manuals.
20. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to the Project.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner under paragraph 6.01.G of the Agreement.

22. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

#### A2.02 Required Additional Services

A. Engineer shall perform or furnish, without requesting or receiving specific advance authorization from Owner, the Additional Services of the types listed below. Engineer shall advise Owner in writing promptly after starting any such Additional Services.

1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.

~~3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.

6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

(for use with 1910-1, 1996 Edition)

This is EXHIBIT B, consisting of 3 pages, part of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_,

## Owner's Responsibilities

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services or in the work of any Contractor.

E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.

F. Arrange for ~~safe~~ access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement. Nothing in this Agreement is intended to require ENGINEER to go onto public or private property in an unsafe manner or when it is unsafe to do so.

G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.

K. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others for Owner so that Engineer may make the necessary calculations to develop and periodically adjust Engineer's opinion of Total Project Costs.

L. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this

Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

N. Attend the pre-bid conferences, bid openings, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.

P. Provide inspection or monitoring services by an individual or entity other than Engineer (and disclose the identity of such individual or entity to Engineer) as Owner determines necessary to verify:

1. That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Q. Provide Engineer with the findings and reports generated by the entities providing services pursuant to paragraphs B2.01.O and P.

R. Perform or provide the following additional services: As indicated in Attachment No. 1.



(for use with 1910-1, 1996 Edition)

This is EXHIBIT C, consisting of 5 pages, part of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_.

#### Payments to Engineer for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

#### ARTICLE 4 -- PAYMENTS TO THE Engineer

##### C4.01 For Basic Services Having A Determined Scope -- Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of \$124,000 based on the following assumed distribution of compensation:

	Phase 1		
a.	Study and Report Phase --	\$ 124,000	Lump Sum
	Phase 2		
b.	Preliminary Design Phase	\$ N/A	
c.	Final Design Phase	\$ N/A	
d.	Bidding and Negotiating Phase	\$ N/A	
d1.	Re-Bid Phase	\$ N/A	
	Phase 3		
e.	Construction Phase	\$ N/A	
f.	Additional Services *	\$ 14,633.00	Not to Exceed Amount

\* The Additional Services covered by the identified Not-to-Exceed Amount shall be charged in accordance with Appendix 2 of Exhibit C and shall require prior written authorization from the Owner and shall be limited to those additional services identified beginning on Page 6 of Attachment No 1.

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

**Sheet C-1**

**(Exhibit C - Basic Services With Determined Scope -- Lump Sum Method)**

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's reasonable estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

5. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding (See schedule in Attachment No. 1) months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to Engineer shall be appropriately adjusted as the parties may agree by an amendment to this contract. Except to the extent provided in an amendment, the Owner shall not be obligated to pay any compensation greater than the Lump Sum.

6. If more prime contracts are awarded for Work designed or specified by Engineer for this Project than identified in Exhibit A, the Engineer shall be compensated an additional amount equal to \$ (To be determined as needed.) for all Basic Services for each prime contract added.

#### C4.02 For Basic Services Having An Undetermined Scope -- Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services having an undetermined scope as follows:

1. Resident Project Representative Services. For services of Engineer's Resident Project Representative, if any, under paragraph A1.05A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ TBD\* based upon Contract Times as set forth in paragraph C4.01. \*To be determined based on actual alternative selected by the Owner.

2. Post-Construction Phase Services. For Post-Construction Phase services under paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be \$ TBD\*. \*To be determined based on actual alternative selected by the Owner.

#### C4.03 For Additional Services

A. Owner shall pay Engineer for Additional Services as follows:

1. General. For services of Engineer's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by

### Sheet C-2

*(Exhibit C - All Other Services/Charges -- Standard Hourly Rates Method of Payment)*

each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

2. Serving as a Witness. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$ 1,800 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for Engineer's Consultants for such services will be on the basis provided in paragraph C4.06.

#### C4.04 For Reimbursable Expenses

A. When not included in compensation for Basic Services under paragraph C4.01, Owner shall pay Engineer for Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.

B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner,

Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of 1.15.

D. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

E. This part E ☒ applies ☐ does not apply. The amounts that might be charged as Reimbursable Expenses are included in compensation for Basic Services, so there is no separate charge for Reimbursable Expenses incurred while performing Basic Services.

#### C4.05 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. The Standard Hourly Rates will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

#### C4.06 For Engineer's Consultant's Charges

A. Whenever compensation to Engineer herein is stated to include charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's

Consultants to Engineer times a Factor of 1.15.

#### C4.07 Factors

A. The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

#### C4.08 Other Provisions Concerning Payment

A. Progress Payments. The portion of the amounts billed for Engineer's services which are related to the services identified in paragraphs C4.02 and C4.03, will be during the billing period based on the cumulative hours charged to the Project by each class of Engineer's employees times the Standard Hourly Rate for each class plus Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. Extended Contract Times. Should the Contract Times to complete the Work be extended beyond the period identified in paragraph C4.01, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

#### C. Estimated Compensation Amounts

1. Engineer's estimate of the amounts that will become payable for Basic Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall be paid for all services rendered hereunder only if the parties execute a written agreement to that effect.

This is Appendix 1 to EXHIBIT C, consisting of 1 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_.

## Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

FAX	<u>\$ NA</u> /page
8"x11" Copies/Impression	<u>\$.10</u> /page
Blue Print Copies	<u>\$.20</u> /sq. ft.
Reproducible Copies (Mylar)	<u>\$2.00</u> /sq. ft.
Reproducible Copies (Paper)	<u>\$ NA</u> /sq. ft.
Mileage (auto)	<u>IRS Rate</u> /mile
Field Truck Daily Charge VAC	<u>\$145</u> /day
Mileage (Field Truck)	<u>\$0.85</u> /mile
Field Survey Equipment Scanner	<u>\$ 2,700</u> /day
Confined Space Equipment	<u>\$ NA</u> /day plus expenses
Resident Project Representative	<u>\$ NA</u> /month
Equipment	
Computer CPU Charge	<u>\$ NA</u> /hour
Personal Computer Charge	<u>\$ NA</u> /hour
CAD Charge	<u>\$ NA</u> /hour
CAE Terminal Charge	<u>\$ NA</u> /hour
VCR and Monitor Charge	<u>\$NA</u> /day, <u>\$NA</u> /week, or <u>\$NA</u> /month
Video Camcorder	<u>\$ NA</u> /day, plus <u>\$ NA</u> /tape
Electrical Meters Charge	<u>\$ NA</u> /week, or <u>\$ NA</u> /month
Flow Meter Charge	<u>\$ NA</u> /week, or <u>\$1,250</u> /month
Rain Gauge	<u>\$ NA</u> /week, or <u>\$250</u> /month
Sampler Charge	<u>\$ NA</u> /week, or <u>\$ NA</u> /month
Dissolved Oxygen Tester Charge	<u>\$ NA</u> /week
Fluorometer	<u>\$ NA</u> /week
Laboratory Pilot Testing Charge	<u>\$ NA</u> /week, or <u>\$ NA</u> /month
Soil Gas Kit	<u>\$ NA</u> /day
Submersible Pump	<u>\$ NA</u> /day
Water Level Meter	<u>\$ NA</u> /day, or <u>\$ NA</u> /month
Soil Sampling	<u>\$ NA</u> /sample
Groundwater Sampling	<u>\$ NA</u> /sample
Health and Safety Level D	<u>\$ NA</u> /day
Health and Safety Level C	<u>\$ NA</u> /day
Electronic Media Charge	<u>\$ NA</u> /hour
Long Distance Phone Calls	at cost
Meals and Lodging	at cost

This is Appendix 2 to EXHIBIT C, consisting of 3 pages, and part of the Agreement between Owner and Engineer for Professional Services dated , .

### Standard Hourly Rates Schedule

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Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services performed on the date of the Agreement are, in dollars per hour:

See attached 2014 Hourly Rate Schedule – Note Rates are subject to change annually.

<del>Billing Class 9</del>	<del>Senior Associate</del>	<del>_____</del>
<del>Billing Class 8</del>	<del>Staff Manager</del>	<del>_____</del>
<del>Billing Class 7</del>	<del>Professional VI</del>	<del>_____</del>
<del>Billing Class 6</del>	<del>Professional V</del>	<del>_____</del>
<del>Billing Class 5</del>	<del>Professional IV</del>	<del>_____</del>
<del>Billing Class 4</del>	<del>Professional III</del>	<del>_____</del>
<del>Billing Class 3</del>	<del>Professional II</del>	<del>_____</del>
<del>Billing Class 2</del>	<del>Technician II</del>	<del>_____</del>
<del>Billing Class 1</del>	<del>Technician I</del>	<del>_____</del>
<del>Principal</del>		<del>_____</del>
<del>Support Staff</del>		<del>_____</del>

## 2014 SCHEDULE OF HOURLY RATES

### Per Diem Rates

Employee Classification	(Fee/Hour)
-------------------------	------------

#### Engineering

Principal.....	\$260.00
Engineering Manager.....	\$230.00
Sr. Project Manager.....	\$190.00
Project Manager.....	\$160.00
Technical Specialist.....	\$240.00
Project Engineer IV.....	\$192.00
Project Engineer III.....	\$170.00
Project Engineer II.....	\$135.00
Project Engineer I.....	\$125.00
Engineer Intern.....	\$115.00
Designer III.....	\$125.00
Designer II.....	\$105.00
Designer I.....	\$84.00
Sr. CAD Technician.....	\$78.00
CAD Technician.....	\$63.00
Sr. Project Administrator.....	\$90.00
Project Administrator.....	\$78.00
Administrative Assistant.....	\$63.00

#### Construction

Construction Administrator III.....	\$135.00
Construction Administrator II.....	\$125.00
Construction Administrator I.....	\$105.00
Project Representative III.....	\$125.00
Project Representative II.....	\$105.00
Project Representative I.....	\$85.00

#### Field Services

Field Technician I.....	\$75.00
Field Technician II.....	\$100.00
Field Services Manager.....	\$120.00

### Per Diem Rates

Employee Classification	(Fee/Hour)
-------------------------	------------

#### Surveying

Sr. Surveyor/Project Manager III.....	\$205.00
Sr. Surveyor/Project Manager II.....	\$185.00
Sr. Surveyor/Project Manager I.....	\$148.00
Project Surveyor.....	\$117.00
Survey Intern.....	\$105.00
Sr. Survey CAD Technician.....	\$95.00
Survey CAD Technician.....	\$80.00
Survey Technician.....	\$74.00
Survey Field Supervisor.....	\$90.00
Project Coordinator.....	\$105.00
Field Survey Party (1 Person Crew).....	\$95.00
Field Survey Party (2 Person Crew).....	\$135.00
Field Survey Party (3 Person Crew).....	\$175.00
Photogrammetrist.....	\$135.00
Photogrammetric Technician.....	\$80.00

#### Subsurface Utility Engineering

Utility Engineering Sr. Project Manager.....	\$190.00
Utility Engineering Project Manager.....	\$160.00
Utility Engineering Technician I.....	\$69.00
Utility Engineering Technician II.....	\$80.00
Utility Engineering Analyst.....	\$90.00
Utility Engineering Specialist.....	\$120.00
Utility Engineering Party (2 Person Crew).....	\$150.00
Utility Engineering Party (3 Person Crew).....	\$185.00

#### Geospatial Information Systems

GIS Specialist.....	\$105.00
GIS Technician II.....	\$85.00
GIS Technician I.....	\$65.00
LiDAR Field Technician.....	\$80.00
LiDAR Technician I.....	\$65.00
LiDAR Technician II.....	\$85.00
LiDAR Technician III.....	\$115.00

#### Hydrographic Surveying

Hydrographic Specialist I.....	\$85.00
Hydrographic Specialist II.....	\$95.00



## 2014 SCHEDULE OF HOURLY RATES

### Expenses

In addition to labor, McKim & Creed bills for the following project related costs at a contractually agreed markup: printing; conference calling charges; document review, permit or recording fees paid on behalf of the client; shipping; bid advertisement; specialty materials, software or equipment rental; sub-consultant fees; costs of project related employee travel including meals, lodging, airfare and miscellaneous travel costs such as tolls, parking etc.; mileage for all company-owned vehicles (trucks) will be billed at \$0.85/mile; employee owned vehicles used for transportation related to the project will be charged at the prevailing federal mileage rate allowed by the IRS at the time the travel occurs.

McKim & Creed also bills for the cost of internal reproduction and the use of specialized equipment related to subsurface utility vacuum excavation, mobile scanning (LIDAR), and hydrographic surveying.

*Rates are valid through December 31, 2014*



**EXHIBIT D (4 pages)**  
**ARTICLE 14 DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY**  
**OF RESIDENT PROJECT REPRESENTATIVE**

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14.1      *Resident Project Representative pursuant to Paragraph 1.01C of the Agreement*

A.        ENGINEER shall furnish a Resident Project Representative (“RPR”), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.

B.        Through such additional observations of Contractor’s work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor’s work in progress, supervise, direct, or have control over the Contractor’s Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor’s work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor’s performing and furnishing the Work, or responsibility of construction for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limits set forth in Section A.1.05 of Exhibit A of the Agreement are applicable.

C.        The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:

1.        *General:* RPR is ENGINEER’s agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR’s dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

2.        *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

3.        *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4.        *Liaison:*

a.        Serve as ENGINEER’s liaison with Contractor, working principally through Contractor’s superintendent and assist in understanding the intent of the Contract Documents.

b.        Assist ENGINEER in serving as OWNER’s liaison with Contractor when Contractor’s operations affect OWNER’s on-Site operations.

c.        Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5.        *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

6.        *Shop Drawings and Samples:*

a.        Record date of receipt of Samples and approved Shop Drawings.

b.        Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.

- c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
- 7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
- 8. *Review of Work and Rejection of Defective Work:*
  - a. Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 9. *Inspections, Tests, and System Startups:*
  - a. Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
  - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
  - c. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
  - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.
- 10. *Records:*
  - a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
  - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
  - c. Record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
  - d. Maintain records for use in preparing Project documentation.
  - e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.
- 11. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to ENGINEER and OWNER copies of all inspection, test, and system startup reports.
- d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.

12. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.

14. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- c. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
- 5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize OWNER to occupy the Project in whole or in part.

**EXHIBIT E (2 pages)**  
**NOTICE OF ACCEPTABILITY OF WORK**

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Project: \_\_\_\_\_

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Contractor: \_\_\_\_\_

Owner: City Of Durham

Owner's Construction Contract Identification:

Effective Date of the Construction Agreement:

Construction Contract Date:

Engineer:

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The undersigned Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by the Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

ENGINEER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

(Reverse side of Notice)

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (“Notice”) on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of the Engineer.
3. Said Notice is given as to the best of the Engineer’s knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services the Engineer has been employed by the Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under the Engineer’s Agreement with the Owner and under the Construction Contract referenced on the other side hereof, and applies only to facts that are within the Engineer’s knowledge or could reasonably have been ascertained by the Engineer as a result of carrying out the responsibilities specifically assigned to the Engineer under the Engineer’s Agreement with the Owner and the Construction Contract referenced on the other side hereof.
5. Said Notice is not a guarantee or warranty of the Contractor’s performance under the Construction Contract referenced on the other side hereof nor an assumption of responsibility for any failure of the Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

**EXHIBIT F**  
**ARTICLE 15 Construction Cost Limit**

**This Exhibit F not used.**

**EXHIBIT G**  
**ARTICLE 16 Insurance**

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16.1 *Insurance*

A. The limits of liability for the insurance required by paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By ENGINEER:

	Required limits of liability
a. Workers' Compensation	Statutory
b. Employer's Liability --	
(1) Each Accident	NA
(2) Disease, Policy Limit:	NA
(3) Disease, Each Employee	NA
c. General Liability --	
(1) Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000
(2) General Aggregate:	\$1,000,000
d. Excess or Umbrella Liability	
(1) Each Occurrence:	\$1,000,000
(2) General Aggregate	\$1,000,000
e. Automobile Liability --	
Either [(1) and (2)], <i>or</i> (3)	
(1) Bodily Injury, each accident	NA
(2) Property Damage, each accident	NA
(3) Combined Single Limit (Bodily Injury and Property Damage, each accident)	\$1,000,000
f. Professional Liability, per claim	
(1) Maximum deductible	\$300,000
(2) Minimum aggregate limit	\$5,000,000 per claim \$7,000,000 aggregate

B. Engineer shall maintain professional liability insurance applicable to all of Engineer's services to which this Agreement applies, including coverage for all engineers, architects, and design professionals either employed by or contracted by Engineer to perform Engineer's services to which this Agreement applies. If Engineer's services to which this Agreement applies include Construction Phase services, that insurance must be in effect by the time the first of those services are performed and maintained continuously for a minimum of three full years after acceptance of the Work by Owner. If Engineer's services to which this Agreement applies do not include Construction Phase services, that insurance must be in effect by the time the first of those services are performed and maintained continuously for a minimum of three full years after the later of (i) the last providing of Engineer's services to which this Agreement applies, or (ii) the receipt by the Owner of the last invoice from Engineer for Engineer's services to which this Agreement applies.

2. By Owner: none

(end of Exhibit G)

## **EXHIBIT H**

### **ARTICLE 17 Dispute Resolution**

After the Owner has engaged a general contractor for construction work and during the construction administration phase of this Agreement only, the parties may avail themselves of the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11) and G.S. 143-128(f1).

## **EXHIBIT I**

### **Allocation of Risks**

Exhibit I is not applicable



## **EXHIBIT J**

### **ARTICLE 18 Special Provisions**

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#### **18.1 (Compensation for Engineer's Errors)**

A. If the Engineer creates plans or specifications containing an error that causes actual construction of a portion of Work that needs to be changed solely because of the Engineer's error, the Engineer shall pay the Owner all costs of correcting the error, including an amount to compensate the Owner for time spent by Owner's employees because of the error without regard to what other services those employees might have done for the Owner had the error not occurred.

1 (Unforeseen Conditions) An error shall not be grounds for payment under this Paragraph 18.1 if the error occurred because of physical conditions were:

not in fact known to the Engineer,  
not in fact known to the Engineer's consultants,  
not readily apparent to the Engineer, and  
not readily apparent to the Engineer's consultants.

2 (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the Owner because of the error shall be compensated at an hourly rate equal to the employee's gross salary (using standards to determine gross salary for federal income tax purposes) during the applicable fiscal year of the Owner divided by the number of hours worked by that employee for the Owner during that fiscal year.

3 (Limits on Double Payments) If this Paragraph 18.1 is applied to compensate the Owner for an error, the Engineer shall not owe the Owner any other compensation to remove the erroneously built Work and replace it with correct Work. However, the payment of such compensation or the application of this Paragraph 18.1 shall not affect liability for personal injury or damage to property. (In the preceding sentence, "damage to property" excludes the damage suffered by the Owner for the cost of replacing the erroneously installed Work for which this Paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

4 (Limit on Use of Payment against Engineer) A payment by the Engineer pursuant to this Paragraph 18.1 shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.

5 (Nonpayment Hereunder Not to Prevent Other Claims) If this Paragraph 18.1 is not applied so as to compensate the Owner for an error, this Paragraph 18.1 shall not be used to construe this Agreement so as to reduce any remedy that is available to the Owner because of that error. For example, to the extent an error is not compensated for because of the amount exceeds the insurance deductible, the Owner will not be deemed to have waived a claim therefor.

18.2 (Assignment of Subcontracts) All contracts between the Engineer and others to provide services on the Project, in which the services are expected to take more than one month to complete and the compensation is expected to exceed \$5,000, shall contain a provision allowing the Owner or a person designated by the Owner to assume the Engineer's rights under the contract so as to require continued performance according to the terms of the contract, provided, however, that neither the Owner nor the person designated by the Owner shall be liable for breaches or other events or occurrences that took place before it assumed the contract. The Engineer will demonstrate compliance with this Paragraph 18.2 when requested by the Owner.

(end of Exhibit J)



## EXHIBIT K

### Accessibility Letter of Compliance

Chapter 11, NC State Building Code, 2012  
ICC/ANSI A117.1-2009



January 1, 2012

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The Durham City-County Inspections Department requires independent verification of all accessible **site** elements and requirements, per the above referenced codes, for all projects which include site plans, within the city and county of Durham, North Carolina.

Chapter 2, section 201 of the 2009 ICC/ANSI A117.1 Standard and Commentary also states that . . . “compliance with the ADA should be verified independently.” This is important as the North Carolina Accessibility Code is NOT deemed compliant with the ADA standards.

To meet these requirements, each project must have a professional architect, surveyor, or engineer make an onsite evaluation of the project when completed, and verify compliance with the approved plans and the above codes, or simply, the North Carolina Accessibility Codes, then provide a sealed letter to this department confirming such.

Any discrepancies noted during the professional’s evaluation would need to be addressed to the contractor/owner/builder, and corrected, prior to a return visit by that professional to confirm corrections have been adequately made to achieve full compliance.

This on site evaluation should include, but not be limited too, slope and cross slope on accessible routes and accessible parking areas, ramps, travel distance, intermediate landings where appropriate, and access to required entrance(s) and other site elements.

A detailed analysis or description of the evaluation process is not necessary. A simple statement reflecting that the site evaluation has found the “as placed” or “as built” components to be in compliance with the applicable codes and the approved site plan. Please avoid terms such as “I think”, “I believe” or “I feel”. The evaluation should reveal to project to be in compliance or not.

Thank you for your assistance in this matter.

**David Coward,**  
Chief Building Inspector